

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD SYLVESTER JONES,)
)
Petitioner,) Civil Action No. 13-984
)
v.) Judge Cathy Bissoon
) Magistrate Judge Lisa Pupo Lenihan
DANIEL BURNS, *et al.*,)
)
Respondents.)

MEMORANDUM AND ORDER

MEMORANDUM

Pending before the Court is Petitioner's Motion for Relief under Rule 60(b). For the following reasons, Petitioner's Motion will be DENIED.

A. Background

On August 20, 2013, Petitioner filed a petition for a writ of habeas corpus, seeking relief from his March 19, 2007 judgement of sentence after a jury found him guilty of First Degree Murder and related firearms offenses. (Doc. 3). On March 31, 2016, the Magistrate Judge issued a Report recommending that the petition be dismissed, and a certificate of appealability be denied. (Doc. 18). Specifically, the Magistrate Judge found that the petition was not timely filed under the Antiterrorism and Effective Death Penalty Act of 1996. (*Id.*). On April 25, 2016, this Court adopted the Report and Recommendation and dismissed the habeas petition. (Doc. 20). Petitioner filed a Motion for Reconsideration on May 10, 2016 (Doc. 22), which the Court denied on May 13, 2016 (Doc. 23). On May 26, 2016, Petitioner filed a Notice of Appeal of the Court's May 13, 2016 Order denying Reconsideration with the Court of Appeals for the Third Circuit. (Doc. 24). On July 28, 2016, the Third Circuit issued a certified order denying

Petitioner's request for a Certificate of Appealability, finding that "Appellant has failed to show that jurists of reason would debate the District Court's decision to dismiss his 28 U.S.C. § 2254 petition as untimely." (Doc. 31).

B. Analysis

The Third Circuit "has held that, when reviewing a Rule 60(b) motion brought following an appeal, district courts are 'without jurisdiction to alter the mandate of this court on the basis of matters included or includable in [the party's] prior appeal.'" Bernheim v. Jacobs, 144 Fed. Appx. 218, 222 (3d Cir. 2005) (citing Standard Oil v. United States, 429 U.S. 17 (1976); Seese v. Volkswagenwerk, A.G., 679 F.2d 336 (3d Cir. 1982)). The courts "distinguish between a Rule 60(b) motion based on matters that were before the court on appeal, which may not be reviewed subsequently by the district court, and a Rule 60(b) motion based on matters that come to light after the appellate court has issued a decision, which properly may be reviewed by the district court." Id. This rule applies to Rule 60(b) motions brought by an unsuccessful habeas petitioner after the conclusion of his appeal. See, e.g., McCollister v. Cameron, No. CIV.A. 11-0525, 2014 WL 4055821, at *3 (E.D. Pa. Aug. 14, 2014) (finding no jurisdiction to consider Rule 60(b) motion where Third Circuit had considered the issues raised by Petitioner in denying appeal), certificate of appealability denied (Mar. 30, 2015); Williams v. Patrick, No. CIV.A. 07-776, 2014 WL 2452049, at *3 (E.D. Pa. June 2, 2014) (same), certificate of appealability denied (Apr. 20, 2015).

Petitioner filed the instant motion after the Third Circuit denied his appeal. Thus, the Court must assess whether the matters raised by Petitioner in his Rule 60(b) motion were "included or includable" in his appeal to the Third Circuit or were matters that came to light after the Third Circuit issued its decision. The Court finds that Petitioner's Rule 60(b) motion raises

no new evidence or argument. To the contrary, Petitioner's motion simply rehashes the same arguments he raised in his initial habeas petition (Doc. 3), objections to the Report and Recommendation (Doc. 19), and Motion for Reconsideration (Doc. 22). Accordingly, this Court is without jurisdiction to rule on Petitioner's Rule 60(b) motion and that motion will be denied.

ORDER

For the reasons stated herein, Petitioner's Motion for Relief under Rule 60(b) (Doc. 33) is DENIED.

IT IS SO ORDERED.

May 16, 2017

s/Cathy Bissoon

Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All counsel of record

cc (via First-Class U.S. Mail):

DONALD SYLVESTER JONES
HA-0386
SCI FOREST
Post Office Box 945
Marienville, PA 16239